

---

---

# HOUSE BILL No. 1406

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3-25; IC 7.1-5-5.

**Synopsis:** Alcoholic beverage matters. Provides that if a primary source of supply acquires the rights to a product and decides not to have a beer wholesaler continue to distribute the product, the primary source of supply must compensate the wholesaler for the loss of the right to distribute the product or reappoint the wholesaler to distribute the product. Allows a beer wholesaler to offer a special discount price to a beer dealer or beer retailer if the beer is a brand or package the beer wholesaler has discontinued or the beer will expire within a certain date and must be destroyed by the wholesaler. Allows a manufacturer of alcoholic beverages to offer on a nondiscriminatory basis bona fide incentives to wholesalers if the incentives are determined based on sales to retailers or dealers occurring during specified times and for specified products.

**Effective:** Upon passage; July 1, 2005.

---

---

## Whetstone, Kuzman

---

---

January 13, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

---

---

C  
o  
p  
y



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1406

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 7.1-3-25 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]:

4       **Chapter 25. Product Transfer Between Wholesalers**

5       **Sec. 1. As used in this chapter, "initial wholesaler" means a beer**  
6 **wholesaler who distributes a product at the time a successor**  
7 **primary source of supply acquires rights to a product under**  
8 **section 4 of this chapter.**

9       **Sec. 2. As used in this chapter "product" means the following:**

10       (1) Beer.

11       (2) Flavored malt beverage.

12       **Sec. 3. As used in this chapter "successor" means a primary**  
13 **source of supply that acquires rights to a product under section 4**  
14 **of this chapter.**

15       **Sec. 4. A successor that:**

16       (1) **acquires the rights to:**

17       (A) **manufacture or distribute; or**

C  
o  
p  
y



(B) the brand name of;

a product; and

(2) intends:

(A) not to appoint the initial wholesaler to distribute the product; or

(B) to reduce the initial wholesaler's territory for the product;

must comply with this chapter.

Sec. 5. The successor shall notify the initial wholesaler of the successor's intent not to appoint the initial wholesaler for all or a part of the initial wholesaler's territory for the product. The successor shall mail the notice of termination by certified mail, return receipt requested, to the initial wholesaler.

Sec. 6. A successor described in section 4 of this chapter shall negotiate with the initial wholesaler to determine the fair market value of the initial wholesaler's right:

(1) to distribute the product in the initial wholesaler's territory immediately before the successor acquired rights to the product under section 4 of this chapter; and

(2) as determined in an arms length transaction entered into without duress or threat of termination of the initial wholesaler's right described in subdivision (1).

Sec. 7. (a) The successor and the initial wholesaler shall negotiate in good faith. If the parties fail to reach an agreement not later than ninety (90) days after the initial wholesaler receives the notice of termination under section 5 of this chapter, the successor or the initial wholesaler may send a written notice to the:

(1) other party; and

(2) American Arbitration Association or its successor in interest;

declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules.

(b) Notice of intent to arbitrate shall be sent, as provided in subsection (a), not later than one hundred twenty (120) days after the initial wholesaler receives the notice of termination under section 5 of this chapter.

Sec. 8. (a) The arbitration shall be conducted in the city within Indiana that:

(1) is closest to the initial wholesaler; and

(2) has a population of more than fifty thousand (50,000).

C  
o  
p  
y



(b) The arbitration shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Sec. 9. (a) The arbitrator's award must be monetary only and may not enjoin or compel conduct. Except as provided in subsection (b), the arbitration is instead of all other remedies and procedures.

(b) Either party may seek preliminary injunctive relief under IC 7.1-3-3-17 to preserve the status quo before the arbitrator's decision is rendered. However, a party may not seek to enjoin the arbitration.

Sec. 10. (a) The cost of the arbitrator and any other direct costs of the arbitration shall be equally divided by the parties. All other costs shall be paid by the party incurring them.

(b) The arbitrator shall render a decision not later than thirty (30) days after the conclusion of the arbitration. The decision of the arbitration is final and binding on the parties.

(c) A party who fails to participate in the arbitration hearings waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

Sec. 11. If the initial wholesaler does not receive payment from the successor of the compensation under section 6 of this chapter not later than sixty (60) days after the date of the settlement or arbitration award:

(1) the successor shall appoint the initial wholesaler as the distributor of the product in the initial wholesaler's territory to at least the same extent that the initial wholesaler distributed the product immediately before the successor acquired rights to the product; and

(2) the initial wholesaler may not be entitled to the settlement or arbitration award.

Sec. 12. Nothing in this chapter shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties.

SECTION 2. IC 7.1-5-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a

C  
O  
P  
Y



1 permittee to sell to a person to whom he is not authorized to sell under  
2 this title.

3 (b) A premises that operates at least two (2) restaurants that are  
4 separate and distinct from each other on the same premises may  
5 provide for a different schedule of prices in each restaurant if each  
6 restaurant conforms to all other laws and rules of the commission  
7 regarding pricing and price discrimination in its separate and distinct  
8 areas.

9 (c) This section does not apply to the holder of an excursion and  
10 adjacent landsite permit that complies with IC 7.1-3-17.5-6.

11 **(d) Notwithstanding subsection (a), a beer wholesaler may offer**  
12 **a special discount price to a beer dealer or beer retailer for beer if**  
13 **the beer:**

14 **(1) is a brand or package the beer wholesaler has**  
15 **discontinued; or**

16 **(2) will expire and must be destroyed by the wholesaler in not**  
17 **more than:**

18 **(A) twenty (20) days for packaged beer; and**

19 **(B) ten (10) days for draft beer.**

20 SECTION 3. IC 7.1-5-5-11 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Except as  
22 provided in ~~subsection~~ **subsections (c) and (d)**, it is unlawful for a  
23 manufacturer of alcoholic beverages or a permittee authorized to sell  
24 and deliver alcoholic beverages to:

25 (1) give, supply, furnish, or grant to another permittee who  
26 purchases alcoholic beverages from him a rebate, sum of money,  
27 accessory, furniture, fixture, loan of money, concession, privilege,  
28 use, title, interest, lease, or rental of premises; or

29 (2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have  
30 a business dealing with the other permittee.

31 (b) This section shall not apply to the sale and delivery and  
32 collection of the sale price of an alcoholic beverage in the ordinary  
33 course of business.

34 (c) If the promotional program is approved under the rules adopted  
35 by the commission and is conducted in all wholesaler establishments  
36 through which the manufacturer distributes alcoholic beverages in  
37 Indiana, a manufacturer of alcoholic beverages may award bona fide  
38 promotional prizes and awards to any of the following:

39 (1) A person with a wholesaler's permit issued under IC 7.1-3.

40 (2) An employee of a person with a wholesaler's permit issued  
41 under IC 7.1-3.

42 **(d) A manufacturer may offer on a nondiscriminatory basis**

C  
o  
p  
y



1     **bona fide incentives to wholesalers when the incentives are**  
2     **determined based on sales to retailers or dealers occurring during**  
3     **specified times for specified products. The incentive may be**  
4     **conditioned on the wholesaler selling a:**

5         **(1) specified product at a specified price or less than a**  
6         **specified price; or**

7         **(2) minimum quantity of a specified product to a single**  
8         **customer in a single transaction.**

9     **The incentive may not be conditioned on a wholesaler having total**  
10    **sales of a minimum quantity of a specified product during the**  
11    **applicable period.**

12         **SECTION 4. An emergency is declared for this act.**

**C**  
**O**  
**P**  
**Y**

